

United States Court of Appeals  
For the Ninth Circuit

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MILES H. ROBINSON, *Appellant*,

vs.

R. W. STEVENS, *et al.*, *Appellees*.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF WASHINGTON,  
SOUTHERN DIVISION

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BRIEF FOR APPELLEE, WASHINGTON STATE  
MEDICAL ASSOCIATION

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Washington State Medical Association adopts the jurisdictional statement and counter-statement of the case contained in the Answer Brief of the principal defendants. Reference to additional facts relating to this appellee and not appearing in the Society's brief will appear as required in the argument which follows.

**QUESTIONS PRESENTED**

The complaint was drawn on the theory of a conspiracy. At the time of trial the appellant injected an additional theory as appears in the pretrial order, namely, a liability for damages was claimed to exist based on the mere fact of the wrongful expulsion. The appellees contended, however, that such a tort liability could only exist if the expulsion "had been brought about in bad faith, that is, out of malice and not actually for the cause alleged in the charge brought against

the accused member” (Appellant’s Brief, p. 5). The trial court found that no conspiracy existed (Finding No. XIV) and that no tort liability existed since all of the procedural steps in the expulsion of the plaintiff Robinson were undertaken by the defendant Medical Society and defendant Medical Association in good faith and in substantial compliance with the respective constitutions and by-laws as they then existed.

The Designation of Points on Appeal has apparently been abandoned by appellant as no reference to them has been made in the opening brief. No specification of errors as required by Rule 18 has been set forth. In lieu thereof appellant lists eight questions presented, all of which relate to the question of bad faith with the resulting claimed error on the part of the trial court in not making certain findings of fact. It is difficult to answer a brief prepared as this one was by a lay person and in complete disregard or ignorance of the rules of the game. However, it is evident that appellant has abandoned any effort to claim error based on the trial court’s finding that a conspiracy did not exist. Appellant’s entire brief is devoted to the contention that bad faith in the expulsion proceedings existed and that the trial court should have so found.

Abandonment of the conspiracy theory and complete reliance on the theory of liability for expulsion in bad faith is confirmed not only by a reading of the appellant’s brief but by appellant’s own expressed intent for at the beginning of the brief, page 2, under the heading of Questions Presented, the appellant states:

“Appellant contends that the actions against



him were performed in bad faith and the lower court erred in not finding, etc.”

In fact, the only legal citation in the entire brief is the reference to an A.L.R. annotation on page 5 relating to liability for an expulsion brought about in bad faith. This appellee will, therefore not discuss the conspiracy angle of this case in detail but will confine the argument to the contention that liability on the part of this appellee exists because it acted in bad faith and out of malice in bringing about the expulsion of Dr. Robinson.

### ARGUMENT

We preface our argument with reference to the following controlling principles. Rule 52A (Rules of Federal Procedure) provides in part:

“Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses.”

This Court has had many occasions to apply this rule. We shall not add to the list of illustrative citations contained in the Society’s brief but shall quote only from the text of Barron and Holtzoff, Federal Practice and Procedure, Section 1131, where the following appears:

“On appeal the Appellate Court does not retry the case. The findings of fact are presumptively correct and will not be set aside unless clearly against the weight of the evidence based on an erroneous view of the law. Consequently an appellant seeking to overthrow the findings has the burden of presenting a proper record to the court of

appeals showing that the evidence compelled a finding in his favor. The Appellate Court takes that view of the evidence which is most favorable to appellee who prevailed at the trial court. It assumes that all conflicts in the evidence were resolved in favor of appellee.”

The trial court’s findings on the matter of good faith of this appellee were as follows:

“All of the procedural steps in the expulsion of the plaintiff Robinson were undertaken by the defendant Medical Society and defendant Medical Association in good faith and in substantial compliance with their respective constitutions and by-laws as they then existed and were under the direction of capable legal counsel; that the acts of the individual doctor defendants in connection with the expulsion proceedings were done and performed as officers, agents and representatives of the respective defendant medical corporations, were done in good faith in accordance with their duty as they best saw it and were consistent with the lawful and proper purpose of dealing fairly with the very serious charge of misconduct and in compliance with the constitutions and by-laws of the respective organizations.” (Finding No. XIII)

We now address ourselves to the facts and our first point is to emphasize that the State Association had no part whatever in the expulsion of Dr. Robinson. The constitution and by-laws of both the State Association and the Walla Walla County Society make it perfectly clear that the Society is completely autonomous and only the Society has the authority to expel one of its members. The following quotations are taken from the State constitution and by-laws:

“The component Society may expel, suspend, censor or otherwise discipline a member for such causes and under such procedure as is stated in the Society’s constitution and by-laws \* \* \*.” — Article IV, Section 4-D, Const.

“Subject to the provisions of Article IV, Section 4, of the constitution each component Society is the sole judge of the qualifications of its members and the acceptance of applicants is wholly at the pleasure of the component Society \* \* \*.” — Chapter 1, Section 7, By-Laws.

“A member is not in good standing within the meaning of the constitution and these by-laws (b) if he has been suspended or expelled by his component society \* \* \*.” — Chapter 2, Section 2 (b), By-Laws.

“A member of a component Society censured, suspended, expelled or otherwise disciplined by his component Society may appeal \* \* \*.” — Chapter 5, Section 3, By-Laws.

Nowhere in the constitution or by-laws of the State Association is there any statement or even an inference which gives the State Association any right or power to expel any member of either the State Association or the local Society. If, however, the Society expels a member he automatically loses his membership in the State Association because of the operation of Article III, Section 2, of the State Constitution which provides in part:

“The active members of this association are all the active members in good standing in the component societies and from whom or on whose behalf the required annual dues or special assessments have been received by the secretary-treasurer of this association in accordance with the applicable provisions of the by-laws.”

The State Association not only had no power to expel Dr. Robinson but it did not even purport to do so. The State Grievance Committee made the recommendation to the Society that the Society in compliance with its constitution suspend Dr. Robinson for six months. The exact wording was as follows :

“We further recommend to the Walla Walla Valley Medical Society that a regular meeting of the Society be held in conformance to the by-laws and constitution of that Society that Dr. Robinson be sentenced to a suspension of his membership in that Society for the period of six months at the end of which time his ethical conduct should be reviewed and if it is found that it has been satisfactory he may be reinstated.” — Exhibit 104.

The Society did not follow the recommendation of the State Grievance Committee as to penalty. In compliance with its constitution and by-laws (Finding No. XIII) it expelled Dr. Robinson. Since the State Association had not expelled Dr. Robinson but had merely made a recommendation to the Society, it was with considerable surprise that it learned through an informal letter from Dr. Cunniffe, Chairman of the AMA Judicial Council, written to Dr. Ross Wright, a member of the State Association, that Dr. Robinson had appealed from the action of the State Association in expelling him, asking for six copies of the Association's answer brief and advising that the matter would be heard at the AMA annual meeting in Los Angeles on December 2, 1951 :

“This is to inform you that Dr. Miles H. Robinson is prosecuting his appeal before the Judicial Council of the American Medical Association from

the decision of the Washington State Medical Association expelling him from membership \* \* \*.''  
— Exhibit 145.

Since the State Association had not expelled Dr. Robinson, its legal counsel wrote to Dr. Cunniffe on the next day, November 20, 1951, Exhibit 149, explaining that the State Association had not expelled Dr. Robinson, that it had no power under its constitution and by-laws to do so, quoting the applicable provisions, that he had been expelled by the local Society and that the Society should bear the burden of the preparation of the brief. For this reason the State Association did not file an appearance or submit any brief in the appellate proceedings of December 2, 1951.

Through March 14, 1951, only five letters passed between the Society and the State Association:

Fullerton to Neill, Executive Secretary of the State Association (Exhibit 23), October 16, 1950, inquiring if the State Grievance Committee had yet been organized;

Neill's answer to Fullerton on October 17, 1950 (Exhibit 24), advising that the organization of the State Grievance Committee had not yet been completed;

Fullerton to Neill, December 16, 1950 (Exhibit 58), referring the Brooks against Robinson matter to the State Grievance Committee;

Neill's answer to Fullerton January 4, 1951 (Exhibit 62), advising that the Grievance Committee was still in the process of organization;

Rounds, Secretary of the State Grievance Committee, March 14, 1951 (Exhibit 67), advises all parties that the committee will hear the complaint on April 22, 1951, at Walla Walla.

These were all routine letters, written in the ordinary and usual conduct of the affairs of the State Association. Up to the time of the receipt of the letter of December 16, 1950 referring the Brooks matter to the State Grievance Committee, the name of Dr. Robinson had not even been mentioned. The State knew nothing about the dispute. During this same period Robinson had resigned from the Bureau, the Edwards complaint had been lodged, the letter of September 30, 1950 had been written, the Brooks complaint had been filed, the Society's meeting of November 21, 1950 had been held, in fact nearly all of the events leading up to the expulsion had taken place, all without any notice to or knowledge on the part of the State Association. Only the suspicious mind of a Dr. Robinson would dare to say that the State Association had participated in all of these events in bad faith and with malice towards Dr. Robinson. There is not one syllable of testimony to sustain such a charge.

The history of the organization of the State Grievance Committee was as follows: In September, 1950, the House of Delegates of the State Association amended its by-laws to provide for a grievance committee and further providing that rules and regulations when approved by the State Board of Trustees should become binding upon all members ten days after publication in the official journal of the association. These rules were published in the official journal (Northwest Medicine) in the February, 1951 issue, Exhibit 66, distributed February 16, 1951. The personnel of the committee was announced March 2, 1951 (Exhibit 398), and on March

14, 1951, Dr. Rounds gave notice of the Robinson hearing to be held April 22, 1951, at Walla Walla.

During the period between March 14 and April 22 there was considerable correspondence—13 letters, but it all related to notices of the meeting, arrangements for a meeting place, arranging for attendance of witnesses and a court reporter, and other similar matters relating to the mechanics of the meeting. There is not a syllable indicating any bad faith on the part of the State Association or anything to infer that they were acting otherwise than in a conscientious attempt to honestly and fairly perform the functions of the committee.

It is interesting to note that during this period Dr. Robinson lodged a complaint with the State Grievance Committee against the Walla Walla Society November 13, 1950 (Exhibit 41) and when he was advised by Dr. Rounds on March 14, 1951, that this complaint would also be heard on April 22, 1951, he expressed real gratification that the State Grievance Committee had accepted jurisdiction and would hear both his complaint against the Society and the Brooks complaint against himself and that he would attend the meeting (Exhibit 83, April 9, 1951). However, he subsequently changed his mind and on April 13, 1951 (Exhibit 92) he stated that he would not attend the meeting because:

1. "Your statement that Mr. Fullerton has been in charge of all the arrangements for this hearing seriously unsettles my confidence in a fairly conducted meeting. If Fullerton and others of his ilk, all avid proponents of insurance medicine which I think ruins our profession, are to have so much influence I can guess what kind of treatment I will get based on samples to date."

2. "I have already attended one long hearing and given what I think will stand as adequate answers, clearing me of alleged unethical conduct in the Brooks affair."
3. "I really cannot spare the time from my growing practice for this kind of thing. It almost seems as if the more I stand up for my rights, the more popular I become with the public here. Therefore I will not attend your hearing on April 22, 1951."

The meeting of April 22, 1951, was held without him.

The Judicial Council held that Robinson's expulsion was wrongful for procedural reasons. The reason for this decision appeared to be that the State Board of Trustees had by its action in approving the recommendation of the State Grievance Committee, disqualified itself as an intermediate appellate body. One of the original rules of the committee, published in *Northwest Medicine* in February, 1950, (Rule 12) provided:

"Subject to approval of the Board of Trustees it may recommend to the component Society of which the accused physician is a member that action be taken by the Society for his expulsion, suspension, or reprimand \* \* \* ."

In view of the Committee's recommendation of a suspension, compliance with this rule required the submission of the Committee's Findings to the Board of Trustees and this was done on May 5, 1951. Whether this rule actually disqualified the Board of Trustees from sitting as an intermediate appellate body or not, is immaterial to the issues in this case. So long as it remained a part of the by-laws of the State Association the State Grievance Committee was required to comply with it and the action of the Grievance Committee in



submitting its recommendation to the Board of Trustees for approval cannot possibly be viewed as action taken in bad faith. The phrase "subject to the approval of the Board of Trustees" was subsequently stricken from the by-laws, but in May of 1951 it was a part of the by-laws of the State Association and compliance with the rule was mandatory. Compliance did not indicate bad faith. Rather it illustrated meticulous efforts of the Grievance Committee to act in strict conformance with the governing rules of the organization.

With the submission of the Grievance Committee's recommendation to the Society, the State Association drops out of the picture, with the exception of one letter, until November 19, 1951, when it received word from Dr. Ross Wright that Dr. Robinson had appealed to the Judicial Council. The single exception is a letter from the President of the component Society to the President of the State Association May 24, 1951 (Exhibit 115) formally advising of Dr. Robinson's expulsion by the Society on May 22, 1951.

There is some additional correspondence involving the State Association subsequent to the first decision of the Judicial Council on February 1, 1952, but up to that date we have outlined all of the correspondence between the State and the Society or any of its representatives.

We have not made any attempt to answer all of the arguments contained in appellant's brief. There are many matters referred to which have been ignored in this brief because they obviously do not affect the

State Association. While appellant has used the word "appellees" in the plural throughout his brief, the context shows that the State Association was not intended to be included. We have, therefore, ignored such matters as the charges of bad faith in connection with the alterations in transcripts of Society meetings, the actions taken at Society meetings, the charges of mental illness, action taken on the Edwards complaint, the Pratt letter to appellant's father, and other similar matters.

### CONCLUSION

The correspondence and actions we have outlined constitute the evidence upon which appellant would have this court overrule the findings of the trial court that no conspiracy existed and that everything done by the officers of the State Association "were done in good faith in accordance with their duty as they best saw it and were consistent with the lawful and proper purpose of dealing fairly with the very serious charge of misconduct and in compliance with the constitutions and by-laws of the respective organizations." (Finding No. XIII.)

We submit that there was no evidence whatever upon which the trial court could have found

- (1) that the State Association expelled Dr. Robinson, or
- (2) that the State Association acted in bad faith with malice and not actually for the cause alleged in the charge brought against the accused member (appellant's brief, page 5).

Certainly when we consider the requirement of Rule

52A, appellant has wholly failed to sustain his burden of proving that the Findings of the trial court are "clearly erroneous."

The State Association respectfully submits that the judgment of the trial court should be sustained.

Respectfully submitted,

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